

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 26, 2009 Session

BETTY L. DAVIS
v.
A. V. CONNER AND TIMOTHY BRYAN CONNER

An Appeal from the Chancery Court for Overton County
No. 34-606 Ronald Thurman, Chancellor

No. M2008-00661-COA-R3-CV - Filed October 22, 2009

This case involves a claim of promissory fraud. The plaintiff is an elderly widow who lives on a farm. The defendant is in the oil business. The defendant approached the widow about drilling for oil on her farm. He told the plaintiff that if she invested in the oil wells, he would match her investment equally and manage the oil wells on her property. He proposed that they share in any profits 65% to the plaintiff widow, and 35% to the defendant. The widow agreed. Over several years, the widow invested over \$100,000 in five oil wells. Some of the wells produced oil, and the resulting profit was shared 65%/35%. The widow later discovered that the defendant had not, in fact, invested any of his own money in the oil wells, and that he was mismanaging them. The widow then filed this lawsuit against the defendant for misrepresentation, fraudulent inducement, and mismanagement of the oil wells. After a bench trial, the trial court awarded the widow compensatory damages and punitive damages. It also divested the defendant of any future interest in the oil wells on the widow's property. The defendant now appeals. We affirm the trial court's decision in all respects.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court is Affirmed

HOLLY M. KIRBY, J., delivered the opinion of the Court, in which DAVID R. FARMER, J., and J. STEVEN STAFFORD, J., joined.

Phillips M. Smalling, Byrdstown, Tennessee, for the appellant, A. V. Conner.¹

Jon E. Jones and Andrew R. Binkley, Cookeville, Tennessee, for the appellee, Betty L. Davis.

¹ Attorney Smalling did not represent A. V. Conner at the trial in this matter.

OPINION

FACTUAL BACKGROUND

Plaintiff/Appellee Betty L. Davis (“Davis”) and her husband married in 1962; together they lived on a 78-acre farm in Overton County, Tennessee, that her husband inherited from his family. They had no children, and they saved money for retirement. When Davis’s husband became ill, Davis began listening to a preacher on the radio, Brother David Carr (“Brother Carr”).² In response to Brother Carr’s on-air request, Davis called in to his radio show to ask for his prayer. After that, Brother Carr became acquainted with Davis and she came to think of him as her minister.

In approximately 1999, Davis’s husband died. After his death, Davis stayed in touch with Brother Carr.³ In 2001, Brother Carr introduced Davis to Defendant/Appellant A. V. Conner (“Conner”), whose business was drilling oil wells. When Conner met Davis, he held himself out to be an experienced, wealthy oil man. Because Conner had been introduced to her by Brother Carr, Davis trusted Conner and believed him to be a good man. Conner told Davis that there was a good chance that oil could be found on Davis’s farm.⁴ He asked Davis to allow him to drill for oil on her property. Davis told Conner she needed time to consider the idea.

A week later, Conner visited Davis and proposed an arrangement whereby Conner would drill an oil well on Davis’s property, and they would share in any royalties 65% to Davis and 35% to Conner. Conner promised Davis that, if she would invest \$20,000 to \$22,000 per oil well, he would match her investment in an equal amount.⁵ He also promised to do everything necessary to complete and operate the wells. Ultimately, Davis agreed to this arrangement.⁶

On September 24, 2001, Davis gave Conner a check for \$20,000 to be applied toward drilling the first oil well. The first well did not produce oil. Conner proposed drilling a second oil well under the same arrangement, and Davis agreed. By February 19, 2002, Davis had given Conner another \$20,000 to be applied to drilling the second oil well. The second well produced some oil, so a pump was installed and the well was completed.

By December 30, 2002, Davis had given Conner additional money to drill a third well. At that point, Davis expressed concern to Conner that their business arrangement had never been put

² Brother Carr hosted a religious radio program in Somerset, Kentucky.

³ The record indicates that Davis gave Brother Carr her power of attorney.

⁴ We recount Davis’s version of the facts because the trial court credited Davis’s testimony and Conner does not appeal the trial court’s credibility determination.

⁵ Davis testified at trial as to this agreement, but Conner disputed it.

⁶ Brother Carr’s name appears on some documents related to the oil wells. Brother Carr’s ongoing involvement in the oil well arrangements is unclear from the record.

into writing. After some delay, Conner prepared an “Oil and Gas Lease” for Davis to sign. Contrary to the parties’ oral agreement, the lease allocated to Davis only one-eighth of the oil production from the wells on Davis’s property, while allocating seven-eighths of the oil production to Conner. Conner told Davis where to sign on the lease, explaining that his son, Timothy Brian Conner (“Tim”), was a notary and would notarize her signature later. At some point before the lease was recorded, Brother Carr’s name was placed on the lease as a co-lessor with Davis.⁷ Together, Conner and Brother Carr brought the executed lease to Tim and he “notarized” her signature, despite the fact that Davis did not sign the document in his presence and he was a notary in Kentucky, not Tennessee. The “notarized” lease was recorded in January 2004.

By mid-2004, a total of five oil wells had been drilled, and Davis had given Conner a total of \$105,600 to pay for the drilling of the wells. Contrary to the original agreement, Conner did not match Davis’s investment; in fact, he invested little of his own money into the venture. To raise monies beyond those supplied by Davis, Conner assigned third parties a portion of his interest in the wells in exchange for their monetary investment. It is unclear whether Davis was aware of these third parties, but it is undisputed that she was not involved in any of Conner’s personal transactions.

Of the five oil wells drilled on Davis’s farm, three were dry, but two of them produced oil that was sold by the parties. The two producing wells were completed using old dilapidated equipment. By the year 2006, Davis had received \$35,269.54 in royalties from the oil produced from these oil wells.

At some point after Conner drilled the fifth well on Davis’s farm, and after Davis’s accountant had asked her for tax documentation on the oil wells, Davis asked Conner to provide her with proof of his expenditures on the wells. Conner was unable to produce any cancelled checks or other contemporaneous records. This gave rise to other disputes between the parties as to their agreement and their duties, rights, and obligations regarding the wells. There were discussions among Davis, Conner, and Brother Carr aimed at resolving their differences, but the discussions were unsuccessful.

PROCEEDINGS BELOW

On June 26, 2006, Davis filed the instant lawsuit against Conner and his son, Tim, alleging misrepresentation, fraud in the inducement, and negligent and incompetent management of the oil wells. The complaint alleged that Davis and Conner agreed to “jointly develop her farm for oil and gas,” that Conner agreed to match Davis’s monetary investment equally, and that she was promised a 5/8 ownership interest in the wells, with Conner to have the remaining 3/8 ownership interest. The complaint averred that Conner promised to do everything necessary to complete the wells on Davis’s property and to operate the wells as part of the consideration for his ownership interest. The complaint asserted that Conner promised Davis that a portion of her interest would be used to purchase drilling bonds, so that as each well became no longer productive, the bonds would generate

⁷ Brother Carr’s expected interest in the oil production was never explained in the record.

a payment to Davis of \$3,500 per well back from her investment. Contrary to their agreement, Davis claimed, Conner had Davis sign a lease giving himself a 7/8 ownership interest in the wells, and Conner's promise to match her investment was false *ab initio*. The complaint also claimed that Conner managed the wells in a negligent manner and failed to provide liability insurance. Davis's complaint sought the following relief:

1. An order compelling the defendant A. V. Conner to provide a full and complete accounting.
2. An order requiring the defendant A. V. Conner to repay plaintiff for all investments that he has not matched on a dollar-for-dollar basis, together with pre-judgment interest on the amounts of his deficiency.
3. An order allowing the plaintiff to contract with a competent well operator for the plugging of the unsafe and unproductive wells and requiring that A. V. Conner pay the costs of said plugging and further providing that the cash bond placed with the State of Tennessee to insure the plugging of the wells be returned to the plaintiff.
4. An order requiring that A. V. Conner disclose all sales and/or assignments that he has made relating to any interest in the plaintiff's property or in wells drilled on the property, together with full details regarding all such assignments and transactions.
5. An order allowing the plaintiff to contract with a competent operator to manage the wells on an interim and ultimately, permanent basis and requiring that the defendant A. V. Conner execute "change of operator" forms and such other documents as may be required.
6. An order allowing the plaintiff to sell oil from the wells on an interim basis and directing that the proceeds of the sale be paid into the hands of the Clerk of the Court pending final resolution of this matter.
7. An award of punitive damages in an amount determined by the Court to be reasonable.
8. An award of the plaintiff's attorney's fees.
9. A final order providing that the defendant Timothy Bryan Conner is jointly and severally liable for all damages and awards assessed against the defendant A. V. Conner, together with the costs of this action.

Though not set out in the prayer for relief in Davis's complaint, she also claimed that there was a *de facto* partnership between her and Conner, and that Conner had defaulted on his partnership obligations. The complaint requested "direction" from the trial court regarding future operation and management of the wells "in order to wind-up this partnership."

Conner's answer to the complaint denied all allegations of wrongdoing and specifically asserted that Conner never agreed to equally match Davis's investment in the oil wells. Conner acknowledged that the lease signed by the parties "has in fact been repudiated by all of the parties and is void." However, he claimed that Davis should be estopped from seeking relief under the

parties' original agreement, because she received 65% of the profits from the oil well, as promised. Conner filed counterclaims against Davis for breach of contract, fraudulent misrepresentation, fraud in the inducement, and conversion, claiming, among other things, that Davis "routinely and regularly interfered with the drilling and collection operation." Conner's answer stated that he and his workers were eventually locked off of Davis's property and were refused access to the oil wells. Conner filed a third-party complaint against Brother Carr, but that claim was later voluntarily dismissed. On September 1, 2006, the trial court entered an agreed order allowing Davis to sell any oil derived from the wells on her property; she was directed to deposit the proceeds with the clerk of the court pending the outcome of the litigation. By the time of trial, \$11,816 in additional royalties had been deposited with the trial court clerk.

On November 14, 2007, the trial court conducted a bench trial on the parties' claims. The primary witnesses were Davis and Conner.⁸ Their respective versions of the facts surrounding their agreement differed greatly.

Davis testified at the outset of the trial. Davis said that Conner approached her about drilling the oil wells on her farm, explaining to her that each well would cost about \$40,000 to drill. Davis claimed that Conner proposed that she invest \$20,000 in the initial oil well and promised that he would match her investment "dollar for dollar." Davis testified that Conner told her that she would receive 65% of the royalties from any oil production, while Conner would receive 35%. After much discussion, Davis finally agreed. She stated that she relied on his promise to match her investment, adding that this factor "was really important [to her decision]. . . . [W]hen he started talking about matching it to dollar to dollar, I thought that can't be a bad deal if I hit a big well." Conner assured Davis that he would pump the oil, take care of her land, and install electricity for an electric pump. She trusted Conner because of his association with Brother Carr, and "because he kept talking about, you know, the Lord."

When the first well did not hit oil, Davis said, Conner convinced her to invest in a second oil well, telling her that he would give her the same deal – equally matched investments, with a 65%/35% share in any royalties. The second well hit oil, and seeing the oil produced from the well made Davis feel "thrilled." Conner told Davis that the second well "wasn't the big one" and assured her that "There is a bigger well here." So they drilled a third well, and it also hit oil, but the third well had to be closed because it had water in it. The discovery of oil on wells two and three prompted Davis to invest in wells four and five. Well number four hit oil, but number five did not. Davis testified that she and Conner had the same financial arrangement for all five wells.

After the fifth oil well was drilled, in response to Davis's insistence that their agreement be put in writing, Conner presented Davis with the lease that was later repudiated. When she signed the lease, Davis said, she did not realize that it provided that she was to receive only a one-eighth interest in the oil production.

⁸ Brother Carr did not appear at the trial.

Initially, Davis testified, her disputes with Conner began because she believed that he was not taking care of her farm as he had promised. She said that Conner was not pumping the wells often enough, so she put in electricity for electric pumps so that she could pump the wells herself. Davis claimed that she paid for other expenses that should have been funded by Conner.

After Davis became uncomfortable about her dealings with Conner, she consulted her accountant. At the accountant's suggestion, Davis requested that Conner give the accountant documentation of his expenditures on the oil wells. Some of these "documents" consisted of handwritten figures based on Conner's recollection of amounts spent on certain items. These reconstructed documents indicated that Conner's expenditures may not have totaled as much as had been represented to Davis, and in fact that Davis was paying for most of the drilling expenses. When Davis questioned Conner about how much money he personally had invested in the oil wells, he rebuffed her, telling her that he did not owe her any money. At that point, Davis consulted a lawyer.

In his testimony, Conner claimed that he never spoke directly with Davis about the oil drilling agreement. Conner testified that he was approached by Brother Carr, who told Conner that Davis had given him a power of attorney with regard to her farm and asked Conner to consider drilling for oil on Davis's property. Conner said that Brother Carr acted on Davis's behalf, and that all of his dealings were with Brother Carr, not Davis. Conner explained that he agreed to the 65%/35% split in royalties because he thought that some of the royalty money would go to Brother Carr's ministry. Conner denied agreeing to share the expenses with Davis equally; rather, he agreed to put in 35% of the expenses, equal to his percentage of the royalties. Conner commented that he thought he had spent "more than [his] third."

Conner testified that a dry oil well cost about \$26,000 to \$28,000 to drill and claimed that he paid the difference between the amounts Davis invested and the actual costs on all the wells. When he did not have sufficient funds to cover his portion, Conner indicated, he sought out other investors, acquaintances who were involved in the oil business. Conner was unable to specify the total amount of money he spent on drilling particular wells, and he conceded that some of the receipts and other documentation that he produced on his expenditures were created solely for the litigation. Conner explained that he had "lost some paperwork." He had no cancelled checks for oil well expenses and claimed that he had paid some of the vendors in cash.

Conner claimed ownership of the equipment on the wells on Davis's farm that produced oil. He said that some of the equipment was new, but acknowledged that much of the equipment was used. Conner purchased one of the oil tanks from his brother, who is also in the oil business; Conner conceded that this tank was rusted on the bottom and had a hole in it. He maintained, however, that if the tank was turned upside down so the hole was at the top, it could last that way for another twenty-five to thirty years. Conner testified that he did not agree to pay for electricity for the well pumps and indicated that, by using electric pumps Davis created problems with the equipment by pumping the wells too often.

Conner testified separately regarding his net worth for purposes of Davis's claim for punitive damages. Conner stated that he had owned a 108-acre cattle farm and several smaller tracts of land in Kentucky. However, within the year before trial, he gave all of this land to his children. He owned an unencumbered fifty-acre lot and the 2.5-acre lot on which his three-bedroom home is situated, but he gave these pieces of property to his youngest daughter because his health was deteriorating. Conner claimed that the total value of the property he transferred to his children was probably worth "under fifty thousand dollars." Within the year before trial, Conner also had sold twenty heads of cattle, purportedly because he could not afford to feed them. About three months before trial, he purchased a 2.8-acre tract that fronted the 108-acre farm he had given his children, paying \$25,000 for it.

Conner's son, Tim, also testified at trial. Tim Conner was employed in the insurance business in Kentucky, but he sometimes accompanied his father to Davis's property on weekends and holidays to check on the oil wells. He stated that he is a notary in Kentucky, not in Tennessee, and admitted that he notarized Davis's signature on the lease after Davis signed it and not while she was in his presence. Tim Conner claimed that Brother Carr told him that he had full power of attorney for Davis, and thus had authority to sign on her behalf.

The trial court also heard testimony from Jim Washburn ("Washburn"), a geologist and an oil industry expert. Washburn examined three of the oil wells on Davis's property; two were in oil production, and one had been drilled and abandoned. Washburn said that the equipment on the two producing oil wells was in disrepair and was unsafe. For example, Washburn said, "the tank batteries were inadequate, both safety-wise and to meet the standards of the oil industry. They were inadequate in the way they were put in." He also said that the pump jacks were in disrepair and were in a dangerous condition. Washburn testified that, between 2000 and 2004, it would have cost between \$15,000 and \$18,000 to drill wells to a depth of 1,800 to 1,900 feet, the depth of the wells on Davis's property.

At the conclusion of the trial, the trial court issued an oral ruling in favor of Davis. The trial court noted that its decision was based in large part on its determinations of the witnesses' credibility, and it specifically found that Davis was credible and that Conner was not. The trial court commented that it "didn't find any of the Defendant's [Conner's] proof credible at all." Based on the evidence, the trial court made the following findings of fact, which were incorporated into an order dated January 8, 2008:

1. The parties contractually agreed that Ms. Betty Davis would receive 65% of the proceeds from the sale of any oil derived from her property, and Mr. A.V. Conner would receive 35% of the proceeds from any sale of the oil.
2. Ms. Betty Davis and Mr. A. V. Conner agreed to share equally all expenses associated with the drilling and production of any expenses associated with the drilling and production of any oil well located on Davis's property.

3. Mr. A. V. Conner held himself out as being an expert in oil and gas development and the management of oil and gas wells.

4. Ms. Betty Davis was totally unsophisticated regarding oil and gas.

5. The defendant A.V. Conner intentionally submitted false information to Betty Davis and to her accountant regarding the costs of drilling and equipping the wells and regarding his investment in the wells.

6. Mr. A.V. Conner contributed little or nothing to the cost of drilling the wells. On the wells that were completed, he used dilapidated equipment that he claims he only “loaned” on a temporary basis to the wells.

7. A.V. Conner and his witnesses were not credible and the Court did not believe their testimony.

8. The plaintiff, Betty Davis, was a credible witness. Even the defendant A.V. Conner acknowledged that the plaintiff was a very honest person.

9. The plaintiff established by clear and convincing evidence that the defendant A.V. Conner defrauded the plaintiff.

Based on these factual findings, the trial court ordered the following relief:

1. That Conner pay Davis compensatory damages of \$42,555 for his unpaid share of well expenses

2. That Conner pay Davis \$2,510.79 for his share of the electrical service installed by Davis

3. That Conner pay Davis \$3,000 for the future cost of cementing dry oil wells

4. That the \$11,816.24 held in trust by the trial court Clerk and Master and any funds from the sale of oil in the tanks at the date of trial shall be divided with a 65% to Davis and 35% share to Conner; that Davis has a lien on Conner’s share toward the satisfaction of her judgment

5. That the oil equipment located on Davis’s land has no value and shall remain with the land

6. That Conner has no future interest in the oil wells

7. That Conner is directed to file change of operator forms designating Davis as the operator within ten (10) days of the order

8. That Davis shall be responsible for all future expenses

9. That Conner must pay Davis \$10,000 in punitive damages

The trial court assessed no damages against Tim Conner.⁹ On January 24, 2008, the trial court entered a separate order on punitive damages, analyzing the factors set out in *Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896, 901-02 (Tenn. 1992), that supported the \$10,000 punitive damages award.

⁹ In its oral ruling after the trial, the trial court assessed punitive damages against Tim Conner. In its final order, however, the trial court changed its decision and assessed no damages against Tim Conner.

On February 2, 2008, Conner filed a motion for a new trial or to alter or amend the judgment, asserting that the trial court's findings were contrary to the weight of the evidence. He further argued that the trial court erred in divesting him of any future interest in the oil wells, in light of the fact that Davis did not request such relief, and because the order had the effect of divesting third party investors of their interests in the oil wells. Conner averred that the final order should be amended to address "the continued royalty interest of the third-party investors as the Court did not have jurisdiction to render orders affecting the interests of the investors." In support of his motion, Conner attached documentation reflecting the royalties that had been paid to the third-party investors. Finally, Conner requested that the trial court vacate the punitive damages award, claiming that it was not warranted under the circumstances. On March 3, 2008, the trial court entered an order denying Conner's motion for a new trial. From this order, Conner now appeals.¹⁰

ISSUES ON APPEAL

On appeal, Conner does not dispute the trial court's factual findings, nor does he challenge the substance of the ruling in favor of Davis. Rather, he claims that the trial court went beyond the pleadings and the proof at trial in divesting him of any future interest in the oil wells when (a) that relief was not requested by Davis, (b) the evidence in the record showed that third parties had interests in the oil wells, and that they, too, were divested of their interests without being made parties to this action, and (c) divesting Conner of his interest in the oil wells constituted double punishment in light of the punitive damages award. Conner also argues that the granting of punitive damages was not supported by the proof under the applicable authority.

ANALYSIS

We first address Conner's argument that the trial court erred in divesting him of any future interest in the oil wells. Because Conner does not challenge the trial court's factual findings on appeal, we must determine, in light of the facts as found by the trial court, whether the trial court erred as a matter of law. We review issues of law *de novo*, with no presumption of the correctness of the trial court's decision. *Noblin v. Christiansen*, No. M2005-01316-COA-R3-CV, 2007 WL 1574273, at *5 (Tenn. Ct. App. May 30, 2007); *see also Ganzevoort v. Russell*, 949 S.W.2d 293, 296 (Tenn. 1997).

Generally, a party who has been fraudulently induced into entering into a contract has the option of treating the contract as void and rescinding it or going forward with the contract under the terms as they were represented by the defrauding party:

It is well-settled in Tennessee contract law that fraud in the inducement renders contracts voidable at the instance of the party upon whom fraud was perpetrated. It is clear that an individual induced by fraud to enter into a contract may elect between two remedies. He may treat the contract as voidable and sue for the equitable remedy

¹⁰ There was no appeal of the judgment in favor of Tim Conner.

of rescission or he may treat the contract as existing and sue for damages at law. *Vance v. Schulder*, 547 S.W.2d 927, 931 (Tenn. 1977); *Derryberry v. Hill*, 745 S.W.2d 287, 291 (Tenn. Ct. App. 1987); *Graham v. First Am. Nat'l Bank*, 594 S.W.2d 723, 726 (Tenn. Ct. App. 1979).

Frizzell Constr. Co. v. Gatlinburg, L.L.C., No. 03A01-9805-CH-00161, 1998 WL 761840, at *3 (Tenn. Ct. App. Nov. 2, 1998), *affirmed and remanded*, 9 S.W.3d 79 (Tenn. 1999). In the instant case, the language in Davis's complaint and the arguments made at trial reflect an election to treat the contract as existing and sue for damages. The complaint asks the trial court to order Conner to provide a complete accounting and to "repay the plaintiff for all investments that he has not matched on a dollar-for-dollar basis." At the conclusion of the trial, counsel for Davis explained in his closing argument:

What do we ask the Court to do? We ask the Court to put in place the deal they really did originally make. That they would split the costs of these wells fifty-fifty. That she, the owner of the land, would get 65 percent. He'd get 35 percent. That the Court put that math back on what's already been paid, put that math on what the expenses have been. . . .

We further ask the Court to grant Betty Davis a lien in all of the wells and all of the income to fully recover what she was supposed to be paid. We ask that the Court give us interest . . . to the extent that she's out of balance, which she is drastically. And that she recover that [sic] pre-judgment interest in this situation.

Consistent with this prayer for relief, the trial court awarded compensatory damages to Davis in accordance with her understanding of the parties' agreement.

The trial court went further, however, and divested Conner of any future ownership interest in the oil wells. Conner characterizes the trial court's decision to divest him of his ownership as an "afterthought," claiming that it came as a surprise to him because he was not on notice of this potential remedy. Indeed, the trial court's ruling was made after its oral ruling on the other issues, and was apparently prompted by questions from counsel:

[Trial Court]: . . . Who will draw the Order?

[Counsel for Davis]: I will draw the Order, Your Honor.

[Counsel for Conner]: What about the equipment?

[Trial Court]: The equipment stays on the land. It goes with the land.

...

[Counsel for Conner]: The Court has made no provision that I heard regarding any future expenses on the operation of the well.

[Trial Court]: Any future expenses will be Ms. Davis'. Because I am awarding the wells to her, the property to her. It's on her property, and it stays with her.

[Counsel for Conner]: We have no further leasehold interest in the well[s]?

[Trial Court]: No.

[Counsel for Conner]: Other than the oil that's in the tanks.

[Trial Court]: And it's going to be split 65/35.

[Counsel for Davis]: And all future goes to her.

[Trial Court]: After this oil in there right now is sold, ---

[Counsel for Davis]: Yes.

[Trial Court]: It's going to be sold, and it's going to be split 35/65%.

Citing this exchange, Conner argues that the relief was not requested by Davis, and that the trial court, therefore, was without authority to award it.

We agree with Conner's observation that Davis did not directly ask the trial court to divest Conner of his interest in the oil wells. However, Davis's complaint includes a request that the trial court direct the manner in which the parties end their contractual relationship. The complaint avers that the parties had a *de facto* partnership and asks the trial court to give "direction" in attempting to "wind up" the partnership. In the complaint, Davis further asks the trial court for permission to contract with another operator for the oil wells in order to replace Conner in that capacity. Thus, contrary to Conner's assertion, the complaint asks the trial court to resolve the parties' future duties and responsibilities once and for all. For purposes of ending the parties' business relationship, it is immaterial whether their arrangement could have been characterized as a partnership, a joint venture, or something else.¹¹ *See Noblin*, 2007 WL 1574273, at *7. The parties in fact had a business relationship that was ongoing, Davis requested in her complaint that the relationship be terminated, and relief of this type was necessary for a complete resolution of all of the issues between the parties.

Conner further argues that the trial court's decision to divest him of any future interest in the oil wells failed to take into account the rights of third parties. Davis was apparently aware of Conner's third-party investors, as her complaint requested that Conner be required to provide "full disclosure regarding the identities of any persons or organizations who have received assignments of interest in oil and gas wells on her property so that she may join them in this case so that the Court can afford complete relief."

At trial, the evidence regarding any third-party assignees was limited to Conner's testimony alluding to them. When asked where he obtained additional money for drilling the oil wells, Conner testified that he "got five thousand dollars off of one man for all five wells. And I got, I think twenty-five hundred or two thousand off another guy." He testified that an unnamed "third person" "went in a little bit" on wells number four and five for an unspecified interest in them. When asked whether he gave any of these investors an assignment of his interest, Conner responded, "No, sir. They don't ask for them." In support of his petition to alter or amend the trial court's judgment,

¹¹ If a partnership did exist, Davis was entitled to seek dissolution of such a partnership and a winding up of the partnership because her relationship with Conner had deteriorated to such a degree that continuing the partnership had become impractical. *See* Tenn. Code Ann. § 61-1-801(5) (2002).

Conner attached division orders and purchase summaries indicating that persons other than him and Davis received royalties from the production of oil from wells number two and four.

At most, this evidence shows that Conner got additional funds for drilling by convincing unnamed persons to give him money in exchange for a portion of his interest in the oil wells. None of these transactions with third parties were reduced to writing, and it is undisputed that none involved Davis. Conner did not ask that these third parties be brought into the litigation or indicate that they were necessary to the litigation, despite the request in Davis's complaint that the trial court "wind up" the business relationship between Davis and Conner. The issues brought to the trial court by both parties pertain only to the business dealings between Davis and Conner. Under these circumstances, we cannot conclude that the trial court's resolution of the future interests of the parties to the litigation was erroneous.

Finally, Conner argues that the trial court's order divesting him of any future interest in the wells constituted double punishment, in light of the punitive damage award. In its oral ruling, the trial judge commented that his decision was based on the "punitive aspect" of the case, noting that Conner defrauded Davis, and that Conner's defense of his actions was not credible. The trial judge observed that Conner was "sweating profusely" during his testimony and remarked that he "never could figure out what [Conner] was trying to testify to. I never could make heads or tails out of what his testimony was. I just didn't find him credible."

In order to evaluate whether divesting Conner of his future interest in the oil wells constituted "double punishment," we must consider the value of Conner's interest in the wells. From our review of the record, it appears that the value of Conner's future interest in the oil wells was minimal and perhaps even zero. Three of the oil wells were dry; only two produced any oil at all. At trial, when asked how much income he had received from the two producing wells during the preceding year, Conner indicated that he had received no proceeds in that year, adding that he "hadn't had any money off [the Davis property] in a while." There is nothing in the record to contradict Conner's assertion. The trial court awarded the drilling equipment to Davis, but in doing so it commented that the equipment had no value. Moreover, while Davis received the right to all future income from the wells, she also has the responsibility to pay all expenses going forward. Under all of these circumstances, we find that the value of Conner's future interest in the oil wells on Davis's property can fairly be characterized as inconsequential. Thus, we affirm the trial court's ruling divesting Conner of any future interest in the oil wells on Davis's property.

Finally, Conner argues that the \$10,000 punitive damage award was not supported by the proof under the applicable authority. It is "established law that an award of punitive damages lies within the discretion of the trier of facts." *Whittington v. Grand Valley Lakes, Inc.*, 547 S.W.2d 241, 243 (Tenn. 1977). Punitive damages may be awarded "only if [the trial court] finds a defendant has acted either (1) intentionally, (2) fraudulently, (3) maliciously, or (4) recklessly." *Hodges*, 833 S.W.2d at 901. The plaintiff has the burden of proving that the defendant acted intentionally, fraudulently, maliciously, or recklessly "by clear and convincing evidence." *Id.* In a non-jury case such as this, it is essential that the trial court "clearly set forth the reasons for decreasing or

approving all punitive awards in findings of fact and conclusions of law” to facilitate appellate review. *See Culbreath v. First Tenn. Nat’l Bank Assn.*, 44 S.W.3d 518, 529 (Tenn. 2001) (quoting *Hodges*, 833 S.W.2d at 902, applying the holding to non-jury cases). If it is determined that punitive damages are warranted, then the trial court must determine the appropriate amount of such damages, considering the factors set out in *Hodges* to the extent that they are relevant. Thus, we review the trial court’s award of punitive damages for an abuse of discretion, keeping in mind the standard to be employed by the trial court. *See Worley v. White Tire of Tennessee, Inc.*, 182 S.W.3d 306, 312 (Tenn. Ct. App. 2005).

In this case, the trial court awarded punitive damages based on its finding “by clear and convincing evidence that defendant’s conduct was intentional and reprehensible,” and that the evidence showed that he “individually and in concert with others defrauded the plaintiff.” This finding is supported by the evidence in the record and establishes a solid basis for the imposition of punitive damages.

In considering whether the *amount* of damages imposed by the trial court was proper, we note that the trial court issued a separate order listing the *Hodges* factors and describing how each factor supported the award. The trial court noted that Conner was evasive in responding to questions about transferring virtually all of his property to his children within the year prior to trial, and that he acknowledged that, prior to the transfer of his property, Conner’s net worth was well in excess of \$100,000. The trial court observed that Conner was sophisticated in the oil drilling business, that Davis was an elderly widow who was clearly not sophisticated in the business, and that Connor drained Davis of her assets while taking on very little risk in their business venture. The trial court found that Connor “repeatedly lied to the plaintiff” regarding the actual expenses involved in the oil well drilling, and said that Conner’s “motive in this case was to profit . . . with as little financial risk as possible” by “misrepresenting facts to the plaintiff so as to fund his oil drilling business at the plaintiff’s expense.” From our review of the record, the trial court’s findings are well-supported by the evidence, and we find no abuse of discretion in the punitive damages award. *See Noblin*, 2007 WL 1574273, at *13 (affirming an award of punitive damages of \$87,000, which was \$17,000 more than the defendant’s profit, because the defendant had fraudulently induced the plaintiff into entering into a real estate venture with no intent to share the profits).

The decision of the trial court is affirmed. Costs on appeal are to be taxed to Appellant A. V. Conner and his surety, for which execution may issue, if necessary.

HOLLY M. KIRBY, JUDGE